REMARKS

1. It is respectfully submitted that the CPA, as amended, is in condition for allowance. By virtue of the Preliminary Amendment, claims 1-11, 27-32, 34-39, and 41-70 are pending. Claims 41-70 have been newly added. The Applicants respectfully request consideration and allowance of the present claims in view of the above preliminary amendments.

2. Claim 2 has been objected to under 37 C.F.R. § 1.75(c) as allegedly being of improper dependent form for failing to further limit the subject matter of a previous claim. Independent claims 1, 27, and 34 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Rutenberg et al.*, U.S. Patent No. 4,269,975 ("*Rutenberg*"). Independent claims 1, 27, and 34 also stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Rutenberg* in view of *Dino*, U.S. Patent No. 5,646,093 ("*Dino*"), *Harris*, U.S. Patent No. 5,990,052 ("*Harris*"), and Applicants' specification.

3. In paragraph 1 on page 2 of the Office Action, the Examiner invited the Applicants to rewrite claim 2 in independent form. Therefore, claim 2 has been rewritten in independent form to comprise the limitations of claim 1. This amendment to claim 2 renders the Examiner's § 1.75(c) objection to claim 2 moot.

4. In paragraph 3 of the Office Action, Applicants note that the Examiner has alleged obviousness of claims 1, 2, 5-11, 27-30 and 34-37 without applying the teachings of *Rutenberg* to a single, specific one of these claims. In paragraph 4 of the Office Action, Applicants further note that the Examiner has alleged obviousness of claims 1, 3, 4, 27, 31, 32, 34, 38, and 39 without applying the teachings of *Rutenberg* in view of *Dino*, *Harris*, and Applicants' specification to a single, specific one of these claims. The specific limitations of these claims to which the Examiner's allegations in paragraphs 3 and 4 apply are not clear to the Applicants, and the same applies for the Examiner's allegations in paragraph 5 of the Office Action. Therefore, the

Applicants request that the Examiner identify the specific limitations of the claims to which the allegations of paragraphs 3, 4, and 5 of the Office Action respectively apply.

5. Applicants respectfully traverse the Examiner's § 103 rejections of independent claims 1, 27, and 34 as being allegedly unpatentable over *Rutenberg*. Applicants submit that, contrary to MPEP § 2143, the Examiner has failed to make out a *prima facie* case of obviousness in rejecting independent claims 1, 27, and 34 in that (1) the Examiner has failed to cite references that teach or suggest all of the elements recited in the rejected claims, and (2) the Examiner has filed to articulate a suggestion to combine the references with a reasonable expectation of success.

Independent claim 1 requires "flaking the splits and extruding the splits." Independent claim 27 requires "flaking the endosperms and extruding the endosperms," and independent claim 34 requires "extruding the endosperms . . . either before or after the endosperms are flaked." Each of these claims require the limitations **extruding and flaking**. On page 4 of the CPA, the Applicants state that advantages of both **extruding and flaking** "include (1) increasing the hydration rate and hydration acceleration rate of the guar gum powder without any corresponding change in particle size, and (2) providing a hydration acceleration rate that is less affected by cold temperatures."

Nothing in *Rutenberg* teaches or suggests this structure recited in claims 1, 27, and 34. The Examiner alleges on page 3 of the Office Action that "*Rutenberg* differs from the present invention in that the use of both flaking and extruding, in the preparation of the ground guar is not disclosed." Applicants agree with the Examiner on this point. However, the Examiner proceeds to allege on page 3 that these allegations would be obvious in view of *Rutenberg* because "combining such methods would not be patentable, since it would logically flow that the combination would produce the same effect, and would supplement each other." On this point, Applicants respectfully disagree.

Rutenberg teaches the use of extruding the guar splits prior to grinding of the guar splits (col. 6, lines 13-18). *Rutenberg* does not disclose or even suggest both **extruding and flaking** the guar splits. Moreover, *Rutenberg* actually teaches away from both **extruding and flaking** the

guar splits. For instance, in Example II, *Rutenberg* compares the viscosity of guar gums prepared by extruding the guar splits prior to grinding with guar gums prepared by flaking the guar splits prior to grinding the guar splits (col. 5, line 67–col. 6, line 2; col. 6, lines 22-68). "The results show that, although the use of flattening (flaker) rolls gives a gum with higher viscosity-producing properties than gum prepared without the flattening rolls, the use of an extruder under the same operational conditionals gives gums with much higher viscosity-producing properties" (col. 7, lines 15-20).

Applicants therefore respectfully submit that the Examiner has failed to articulate a *prima facie* case of obviousness in rejecting claims 1, 27, and 34, because, contrary to MPEP § 2143, the Examiner has failed to cite references that teach or suggest all of the elements recited in the rejected claims.

Furthermore, contrary to MPEP §§ 2143.01 and 2143.02, the Examiner has failed to articulate a suggestion to combine *Rutenberg* and other references with a reasonable expectation of success with respect to claims 1, 27, and 34. Accordingly, Applicants respectfully request that the Examiner withdraw the § 103 rejection and allow claims 1, 27, and 34. Since independent claims 1, 27, and 34 are submitted to be allowable, dependent claims 5-11, 28-30, and 35-37 must *a fortiori* also be allowable, since they carry with them all the limitations of independent claims 1, 27, and 34. Moreover, amended claim 2 is now independent and carries additional limitations over claim 1 on which it is patterned. Since claim 1 is respectfully submitted allowable, Applicants submit that claim 2 must *a fortiori* also be allowable.

6. Applicants respectfully traverse the Examiner's § 103 rejections of independent claims 1, 27, and 34 as being allegedly unpatentable over *Rutenberg* in view of *Dino*, *Harris*, and Applicants' specification. *Applicants* submit that, contrary to MPEP § 2143, the Examiner has failed to make out a *prima facie* case of obviousness in rejecting independent claims 1, 27, and 34 in that (1) the Examiner has failed to cite references that teach or suggest all of the elements recited in the rejected claims, and (2) the Examiner has filed to articulate a suggestion to combine the references with a reasonable expectation of success.

Applicants respectfully submit that *Rutenberg* does not teach or suggest the foregoing methods recited in claims 1, 27, and 34 for all of the same reasons set forth in regard to such claims in paragraph 5 above. Moreover, contrary to MPEP §§ 2143.01 and 2143.02, the Examiner has failed to articulate a suggestion to combine *Rutenberg* with *Dino*, *Harris*, and Applicants' specification. The *prima facie* case of obviousness is thus yet further lacking.

Rutenberg discloses hydrating, extruding, and grinding guar splits to produce a guar gum (col. 6, lines 22-26). *Rutenberg* teaches that extruding the guar splits before grinding results in a guar gum with a higher viscosity than a guar gum produced by flaking the guar splits prior to grinding the guar splits (col. 5, line 65 – col. 6, lines 1-3; col. 7, lines 15-20). *Dino* teaches the use of reacting guar splits in a reactor with various chemicals to produce chemically altered guar products (col. 6, lines 5-28). *Harris* teaches the use of guar gum splits, water, and chemicals to form a gel comprising a chemically altered form of guar (col. 8, lines 35-38). Nothing in *Dino* and *Harris* teach, disclose, or even suggest improving the hydration rate and hydration acceleration rate of a guar gum powder by **extruding and flaking** the guar splits. Moreover, nothing in Applicants' present specification teaches, discloses, or even suggests that improving the hydration rate and hydration acceleration rate of a guar gum powder by **extruding and flaking** the guar splits was well known in the art at the time the present application was filed.

Accordingly, in view of the fact that the Examiner has failed to articulate a *prima facie* case of obviousness in respect of independent claims 1, 27, and 34, Applicants respectfully request that the Examiner withdraw the § 103 rejection and allow independent claims 1, 27, and 34. Since independent claims 1, 27, and 34 are submitted to be allowable, dependent claims 3, 4, 31, 32, 38, and 39 must *a fortiori* also be allowable, since they carry with them all the limitations of the independent claims to which they ultimately refer.

7. With regard to new independent claims 41, 50, 58, and 66, Applicants point out that independent claims 41 and 66 carry additional limitations over claim 1 on which they are patterned. Applicants further point out that independent claims 50 and 58 carry additional limitations over claims 27 and 34, respectively, on which they are patterned. Therefore, it is

respectfully submitted that claims 41, 50, 58, and 66, and claims 42-49, 51-57, 59-65, and 67-70, which depend therefrom, further distinguish over the cited references. Since claims 1, 27, and 34 are respectfully submitted to be allowable, Applicants submit that claims 41, 50, 58, and 66, as well as dependent claims 42-49, 51-57, 59-65, and 67-70 must *a fortiori* also be allowable. Therefore, it is respectfully submitted that all pending claims are in condition for allowance.

8. Applicants note that in many places in the Office Action, including on page 3, lines 6-14 and page 4, lines 9-20, the Examiner has used the Examiner's own personal knowledge in rejecting claims. Applicants object because this use of personal knowledge is unsupported by an affidavit setting forth the Examiner's data as specifically as possible, as required by Rule 104(d)(2). On page 5 of the Office Action, the Examiner states that an "affidavit or declaration is not needed in view of the clear teaching of applicants specification and the prior art." As pointed out in paragraphs 5 and 6 above, it is not clear from the prior art and the prior art as cited by the Applicants' specification that it is obvious to increase the hydration rate and hydration acceleration rate of a guar powder by **extruding and flaking** the guar gum powder before grinding of the guar gum powder. **Therefore, Applicants request and insist that in the event that the Examiner continues to rely on this personal knowledge in examination of the Continuation Application, the Examiner enter into the record a supporting affidavit in accordance with Rule 104(d)(2), setting forth as specifically as possible all of data.**

CONCLUSION

Applicants believe that in view of the foregoing remarks, pending claims 1-11, 27-32, 34-39, and 41-70, as amended, are allowable and that the Instant Application is now in full condition for allowance, which action Applicants earnestly solicit. Should the Examiner have any questions, or believe that a telephone interview may expedite the further examination of this application, the Examiner is requested to contact the undersigned at the telephone number shown below.

Respectfully submitted,

VINSON & ELKINS L.L.P.
Attorneys for Applicants

Randall C. Furlong
Reg. No. 35,144
1001 Fannin Street, Suite 2300
Houston, Texas 77002-6760
713-758-4802 (telephone)
713-615-5114 (telefax)

Date: July 26, 2002

Version with markings to show changes made to claim 2:

2. (Amended) [The method of claim 1, in which]A method of manufacturing a powder having improved hydration characteristics, the method comprising the steps of:

(a) hydrating guar gum splits, in which the guar gum splits comprise polygalactomannan[.];

(b) processing the hydrated splits, said processing step including the substeps, in either order, of flaking the splits and extruding the splits;

(c) grinding said processed splits into a powder; and

(d) drying the powder.